IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA.

RSA No. 320 of 1995

Reserved on : 17.8.2007

Date of Decision : August 30th, 2007

Jagdish Singh …Appellant

Versus:

Gurmit Singh and others …Respondents.

***Coram*:**

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1] *No*

For the appellant: Mr. N. K. Thakur, Advocate.

For respondents 1 & 2: Mr. Ashwani K. Sharma, Advocate.

Sanjay Karol, J.

The present appeal arises out of the order dated 27.6.1995 passed by the District Judge, Una in C.A. No. 101/95 titled as Jagdish Singh and another v. Gurmit Singh and another, dismissing the appeal filed by the appellants.

The plaintiffs' suit No. No. 67/93, titled as Gurmit Singh and another v. Jagdish and others, for declaration and permanent injunction was decreed by the trial Court on 7.4.1995 to the following effect-

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

> "The plaintiffs are declared owners in possession of land measuring 0-31-13 Hects. comprised in khasra Nos. 593, 596, 591, 595 situated in village Guglehar, Tehsil Amb, Distt. Una, H.P. to the extent of half share and entries in the revenue record to the contrary are declared as wrong, illegal, null and void. Entries showing defendants No.5 & 6 as Kabizan are declared wrong, illegal, null and void. Consequently, the defendants are restrained from denying half share of the plaintiffs in the suit land and from forcibly ousting them from their joint possession over the suit land to the extent of half share. There is no order as to costs. Decree sheet be prepared accordingly."

Appeal against the same was filed by the defendants before the District Judge, Una, which has been dismissed in terms of order dated 27.6.1995, which is reproduced in its entirety as under:-

> "No authority to substantiate the contention as argued on 12.6.1995 has been produced by the ld. counsel for the appellant. Therefore, my view remains the same that even if the joint tenants purchased the suit land in un-equal shares, the tenant purchasing the less share though his tenancy qua his share was merged in his superior rights of title, yet his right of tenancy qua his remaining share shall not be deemed to be extinguished. Therefore, in view of my discussion in my orders dated 25.5.1995 and 12.6.1995, I do not see ground to admit the appeal. It is dismissed in limini."

Perusal of the record shows that the appeal has been dismissed in *limini* and no decree sheet has been prepared. The

orders dated 25.5.1995 and 12.6.1995 also have been perused. There are no findings and, in any case, are not reasoned orders. The operative portion of the same is reproduced as under:-

> "25.5.1995: ……Though the ld. counsel for the appellant has tried to argue that the findings of the lower court to this effect are not correct but I am not convinced as yet, therefore, the ld. counsel for the appellant is advised to file written arguments on 12.6.1995. In the meantime, records of the lower court be also requisitioned before admission
> 12.6.1995:……Therefore, the learned counsels for the appellants have been further advised to support their view with law authorities on 27.6.1995."

Order dated 27.6.1995 is undoubtedly an unreasoned order and has been passed without issuing notices to the respondents, as the appeal was dismissed in *limini.*

The present appeal was admitted on the following substantial questions of law:-

> "1. Whether the person can hold two title; one of the owner and other of tenant of his own land?
>
> 2. Whether holder of inferior rights purchasing the superior rights can at the same time retain the inferior rights without disclosing his clear intention of doing so?
>
> 3. Whether in the instant case the intention of the predecessor-in-interest of the respondents is established to retain the inferior rights even after the purchase of superior rights?
>
> 4. What is the effect of mis-interpreting and mis-appreciating the documents Exts.P-1, P-2 & P-4?
>
> 5. Whether the impugned judgment is bad being a non-speaking judgment by a final court of fact?

I propose to deal with question No.5 first.

The judgment of the learned first Appellate Court does not assign any reason for dismissing the appeal. Learned counsel for the appellants has referred and relied upon the decisions of the Apex Court in ***Madhukar and others*** v. ***Sangram and others*** (AIR 2001 SC 2171), ***State of Rajasthan*** v. ***Harphool Singh (dead) through his LRs*** (2000(5) SCC 652) and ***United India Insurance Co. Ltd.,*** v. ***Kanwal Nain Sachdeva and others*** (1999(9) SCC 193), wherein the Apex Court has held as under:-

> "The first appellate Court is the final Court of fact and it is incumbent upon it to consider the entire matter on law and facts."

Therefore, in my view, the first Appellate Court being the final Court of fact and it was incumbent upon the Court to have passed a reasoned order, after considering the entire material on record. In the circumstances, the appeal is allowed. Question No.5 is answered accordingly. In view of my findings on question No.5, there is no need to answer other substantial questions of law. The order passed by the first appellate Court is quashed and set aside. The matter is remanded to the learned District Judge, Una for decision afresh in accordance with law. Parties through their learned counsel are directed to appear before the learned District Judge, Una on ***21.9.2007***. The District Judge will dispose of the appeal on or before 31.12.2007.

The records of the Courts below be sent back forthwith. There shall be no order as to costs.

(Sanjay Karol),
Judge.

August 30th, 2007.
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